No. 21,953

United States Court of Appeals
For the Ninth Circuit

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITIONER'S OPENING BRIEF

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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JURISDICTIONAL STATEMENT

This is a proceeding to review an order of the National Labor Relations Board holding that petitioner (Standard Oil Company of California, Western Operations, Inc.) violated sections 8(a)(5) and 8(a)(1) of the Labor Management Relations Act (61 Stat. 136, 141, 29 U.S.C. 158(a)(5) and 158(a)(1))[1] by refusing to furnish home addresses of employees represented by a labor union (Oil, Chemical and Atomic Workers International Union, Richmond, California, Local 1-561, AFL-CIO) upon the request of that union.

The decision and order of the National Labor Relations Board (R. Vol. I, pp. 28-40) was issued on June 30, 1967,

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[1]These and other relevant provisions of that Act are printed in Appendix A hereto.

and the petition for review (R. Vol. I, pp. 41-45) was filed on July 5, 1967.

Petitioner operates an oil refinery at Richmond, California (R. Vol. I, p. 29). The acts which the Board held to constitute unfair labor practices occurred in the State of California (R. Vol. I, pp. 29-33; General Counsel's Exhibits 3, 6, 7, 8, 10 and 11).

This Court has jurisdiction under section 10(f) of the Labor Management Relations Act, as amended (61 Stat. 136, 148-149; 72 Stat. 941, 946; 29 U.S.C. 160(f)).

STATEMENT OF THE CASE

Standard Oil Company of California, Western Operations, Inc. (hereinafter referred to as "the Company"), is engaged in the refining and sale of petroleum and petroleum products, including the operation of a refinery at Richmond, California, where it employs approximately 2600 persons (R. Vol. I, pp. 15, 29). Oil, Chemical and Atomic Workers International Union, Richmond, California, Local 1-561, AFL-CIO (hereinafter referred to as "the Union") represents approximately 1500 production and maintenance employees, about 50 per cent of whom are members of the Union (Vol. I, p. 29).

During the period involved in the instant case, the relations between the Union and the Company were governed by a collective bargaining agreement (General Counsel's Exhibit 2) signed on March 10, 1965 (ibid., p. 52). That agreement, which went into effect on February 15, 1965, provided it would be renewed annually in the absence of written notice of termination (ibid., Article 2,

p. 2). No such notice having been served, the agreement remained in effect until February 15, 1967 (R. Vol. II, pp. 14-15, 229-230).

The agreement provides, inter alia, for maintenance of Union membership with an opportunity for members to withdraw from the Union on specified terms (General Counsel's Exhibit 2, Article 3, p. 3), the furnishing of seniority lists to the Union (ibid., Article 8, pp. 8-10), representation of employees by Union stewards in each unit (ibid., Article 19, pp. 46-48), and the furnishing by the Company, upon application by the Union, of appropriate locations for Union bulletin boards (ibid., Article 24, p. 50).

It is a long-standing Company policy, followed without deviation, not to give out the home addresses of employees (R. Vol. II, p. 225).

This case arises out of a letter dated April 5, 1965, from Victor J. Van Bourg, an attorney for the Union, to William L. Diedrich, Jr., an attorney for the Company (General Counsel's Exhibit 3). Mr. Van Bourg's letter referred to employee orientation programs for newly hired employees, in the course of which unions are discussed. The letter requested "a complete list of all of the employees at Standard Oil Refinery in Richmond with the names, addresses and social security number, if possible, so that the Union at least can counter the company propaganda by mass mailing." No other reason for the Union's requesting the subject information was given (ibid.). T. M. Sheehy, General Manager of the Company's Richmond Refinery, on April 15, 1965, wrote the Union in reply to Mr. Van Bourg's letter that the

Company had just given the Union a seniority list on April 8, 1965, which showed the name of each employee represented by the Union and that the Company was not willing to provide the Union with home addresses of its employees (General Counsel's Exhibit 6).

On the same date as Sheehy's letter to the Union, April 15, 1965, Mr. Van Bourg addressed a second letter to Mr. Diedrich (General Counsel's Exhibit 7). This letter referred to a fifty-page orientation booklet entitled "You and your Company" and expressed Mr. Van Bourg's objections to a statement therein that union representation is not necessary for employees to enjoy fair treatment and good working conditions (General Counsel's Exhibit 7).[2]

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[2]The portion of the booklet objected to by Mr. Van Bourg was as follows:

"*What about unions*

"On the preceding pages of this booklet, we've tried to cover, in a general way, the many policies and programs developed by your Company's management to assure you fair treatment and to provide a rewarding career.

"We sincerely believe that good employee relations can be maintained and essential employee needs fulfilled through sound management administration, without the necessity of union organization and representation. Your Company's wages, hours, and working conditions are among the best in industry, and its employee relations policies are designed to promote fair play and mutual respect. Policies like these are essential for 43,000 people to work together effectively. This also requires a great deal of cooperation and understanding, and a healthy regard for the rights of others.

"As for union membership, it is your Company's belief that representation by an outside organization is not necessary in order for employees to enjoy fair treatment and good working conditions. However, this is something that all employees should decide for themselves after careful consideration of all the facts. While your Company recognizes your right to join a union, it does not believe that you should be forced to join a union as a condition of employment and is opposed to all forms of compulsory unionism" (General Counsel's Exhibit 13, pp. 31-32).

The Board found that the Company "was of course privileged thus to express its views" (R. Vol. I, p. 36).

Mr. Van Bourg further stated that he had been advised that this booklet had been sent to Company employees by mail and requested, on behalf of the Union "a complete mailing list of Standard Oil employees so that we may send them counter documentation and statements" (General Counsel's Exhibit 7). No other reason was given for the Union's request for the home addresses of Company employees.

Mr. Diedrich replied in a letter dated April 26, 1965, that he had advised the Company that the statements in the booklet "You and your Company" were well within the Company's right of free speech and further stated that the Union had just been given a complete seniority list which fulfilled the Company's contractual and legal obligations (General Counsel's Exhibit 8).

Neither of the foregoing requests for the home addresses was limited to the home addresses of the employees in the unit represented by the Union; they requested the home addresses of "all of the employees at Standard Oil Refinery in Richmond" (General Counsel's Exhibit 3) and "a complete mailing list of Standard Oil employees" (General Counsel's Exhibit 7). Of the approximately 2,600 production and maintenance and office employees at the Richmond Refinery, only about 1,500 are represented by the Union (R. Vol. II, pp. 33-34).

On May 12, 1965, the Company initiated interim negotiations during the term of the existing collective bargaining agreement by making a proposal to change certain benefit plans referred to in the collective bargaining agreement between the Union and the Company (R. Vol. II, pp. 43-44). These negotiations began on May 20,

1965, and were successfully concluded near the end of July 1965 (R. Vol. II, p. 41). At no time during the negotiations did the Union request the Company, either orally or in writing, to supply it with the home addresses of the employees in the bargaining unit (R. Vol. II, pp. 44, 214, 219).

On June 21, 1965, the Company mailed an informational letter (General Counsel's Exhibit 15) to bargaining unit employees outlining the benefit plan changes proposed by the Company, and advising the employees of the current status of the negotiations (R. Vol. II, pp. 41-42).

There was no further request for employees' names and home addresses after the Union's letters dated April 5 and April 15, 1965 (General Counsel's Exhibits 3, 7) until March 8, 1966, almost one year later. Mr. Van Bourg, the Union's attorney, on that date wrote Mr. Diedrich, the Company's attorney, this time requesting that the Company furnish the Union the names and addresses of the employees "in the collective bargaining unit" (General Counsel's Exhibit 10). The letter states no reason for the request.

On March 16, 1966, Mr. Diedrich again wrote Mr. Van Bourg stating that the Company was unwilling to provide home addresses of employees, but would continue to furnish the Union with a seniority list in accordance with the terms of the collective bargaining agreement (General Counsel's Exhibit 11). Accordingly, by letter dated March 25, 1966 (Respondent's Exhibit 4), and mailed on or about that date, the Company sent to the Union copies of the seniority list as of January 15, 1966 (R. Vol. II, pp. 201-202). As the Board found, the delays occurred

in the delivery of this and other recent lists because the Company "had some difficulty while switching compilation of the lists to a computer" (R. Vol. I, p. 31).

On June 28, 1965, the Union filed a charge against the Company with the National Labor Relations Board (R. Vol. I, p. 3) on the ground that the Company "refuses to give the Union the list of the names and addresses of employees in the bargaining unit so that the Union can send out a mailing to counter Company propaganda" (R. Vol. I, p. 4). The Union, on May 5, 1966, filed an amended charge which asserted that the Company "has refused and continues to refuse to bargain collectively in good faith with the Union * * * in that it refuses to furnish the names and addresses of its employees to the aforementioned union" and asserted that such conduct violates sections 8(a)(1) and (5) of the National Labor Relations Act (R. Vol. I, p. 5).

Subsequently, the Board issued a complaint against the Company (R. Vol. I, pp. 6-9) charging the Company with refusing to bargain collectively with the Union by not making available to the Union the names and addresses of the employees in the unit represented by the Union (R. Vol. I, p. 8, pars. IX and X). The Company answered, admitting the Union's requests and the Company's refusal to furnish addresses, but denying that it refused to furnish the names of employees or that the Company refused to bargain with the Union (R. Vol. I, pp. 12-13).

A hearing was held before the trial examiner on July 7 and 8, 1966 (R. Vol. II). On November 2, 1966, the examiner issued his decision (R. Vol. I, pp. 15-18) in

which he found that the only reason that the Union had requested the addresses of Company employees was for the purpose of mailing out propaganda (ibid., p. 16); that there was no issue presented in the case of the good faith of the Company (ibid., pp. 16-17), and no showing that the Union sought the employees' addresses in connection with negotiations or the administration of collective bargaining agreements (ibid., p. 18). For these reasons, he recommended that the complaint be dismissed.

Exceptions were filed by the General Counsel (R. Vol. I, pp. 19-21) and by the Union (R. Vol. I, pp. 22-26), and the Board, through a three-member panel, reviewed the examiner's decision and, one member dissenting, rejected his conclusion of law (R. Vol. I, pp. 28-39). The majority of the panel disagreed with the findings of the examiner with respect to the relevance of the requested information to the Union's bargaining and contract administration responsibilities and ruled that the allegations in the complaint (filed by the Board's General Counsel after the Union's charges had been filed) that a list of addresses was "relevant to collective bargaining" constituted a request on behalf of the Union for the addresses in connection with bargaining (R. Vol. I, p. 33). The majority adopted the findings of the trial examiner to the extent they were consistent with their determinations; in this respect, they did not reject the trial examiner's determination that there was no showing of bad faith on the part of the Company (R. Vol. I, p. 28). They concluded that:

> "In this case the relevance of the unit employees' address list is apparent from a comparison of the Union's statutory duty of fair representation with the difficulties it faced in attempting to reach those

to whom it owed such duty. The Union's duty extends to non-union unit employees as well as to union members. Because of the relatively low union membership in the unit, the absence of a union-security clause in the collective-bargaining agreement, the residential dispersion of unit employees * * *, the apparent ineffectiveness of the steward system, the lack of adequate exposure of unit employees to union bulletin boards, and the inefficiency of handbilling efforts, the Union could not in any effective manner communicate with the beneficiaries of its statutory obligation. On the other hand, the possession of an address list would enable the Union to poll the unit employees as to their preferences and priorities in contract negotiations, their experience and recommendations with respect to the operation of the grievance-arbitration machinery, and their thoughts on the wisdom of striking over a particular issue'' (R. Vol. I, pp. 34-35).

* * * * *

''The company appeals, which the Union desired to answer, sought to persuade employees that union representation was not needed by them to assure fair treatment and working conditions. Respondent [the Company] was of course privileged thus to express its view. But the Union was justified in inferring that Respondent's purpose was to weaken employee support of the Union and thereby to reduce, if not indeed to destroy, the Union's strength and effectiveness as a bargaining agent. The Union, therefore, in the discharge of its representative responsibilities to all employees in the unit whom it was statutorily required to serve, had a legitimate interest in responding to Respondent's arguments by communicating to the unit employees its side of the bargaining story

—to attempt to show, for example, why the employees needed the Union, how the Union had served them in the past and how it might in the future, why its contract administration actions and its bargaining proposals deserved their backing, and why it was in the employees' interest to provide membership and other support to their bargaining agent. But in order to be able effectually to counter Respondent's repeated statement of views, the Union needed first to know which employees were in the bargaining unit and where they could be reached. As the full information thus required lay exclusively in Respondent's possession, and was not otherwise available to the Union for reasons earlier stated, the Union had a right to demand this information from Respondent, and Respondent, we hold, had a correlative obligation to furnish it'' (R. Vol. I, p. 36).

The dissenting member of the panel pointed out that

''The Union's request for the list of employees' names and addresses was based solely on its desire to 'counter the company propaganda.' The Union's stated reason thus negates any suggestion that the list was sought for bargaining purposes. My colleagues apparently rely on the allegation in the complaint to the effect that the list was requested 'because it was relevant to collective bargaining' as supplying the essential ingredient to a violation of the Act. But the General Counsel's *post hoc* rationalization scarcely suffices, in my opinion, to give the Union a reason it did not advance, and which was not before the Respondent when it refused the Union's request. Indeed, the Respondent does not claim that such a list is never required to be furnished, only that on the facts here it was not sought for bargaining purposes'' (R. Vol. I, p. 39).

SPECIFICATION OF ERRORS

The National Labor Relations Board erred in requiring the Company to furnish home addresses of its employees to the Union as part of the Company's duty to bargain in good faith pursuant to section 8(a)(5) of the Labor Management Relations Act in that

(1) Such addresses are not data necessary to negotiating or administering collective bargaining agreements;

(2) The Union did not request the home addresses for bargaining purposes but for the purpose of contacting the employees in order to strengthen the position of the Union;

(3) The decision of the Board interferes with the relative bargaining power of the employer and the union by requiring acts by the employer designed to strengthen the union in violation of national labor policy, as expressed in sections 8(d) and 8(a)(2) of the Labor Management Relations Act.

ARGUMENT

I. THE DUTY OF AN EMPLOYER TO BARGAIN IN GOOD FAITH DOES NOT REQUIRE IT TO SUPPLY THE UNION WITH THE HOME ADDRESSES OF ITS EMPLOYEES.

There is no independent duty on the part of an employer to supply information to a union. Such duty as the employer may have to supply information must arise under the provisions of the Labor Management Relations Act. In the case at bar, the National Labor Relations Board based its determination that the Company is required to supply addresses of its employees to the Union

upon section 8(a)(5) of the Act which requires the Company to bargain in good faith. In so doing, however, the Board has extended the duty to supply information beyond the requirements of good-faith bargaining.

Information which an employer must give the union is data which is required in order to permit an intelligent discussion of the issues between the negotiating parties. The Supreme Court noted, in *Labor Board v. Truitt Mfg. Co.* (1956) 351 U.S. 149, 152, that "Section 204(a)(1) of the Act admonishes both employers and employees to 'exert every reasonable effort to make and maintain agreements.'" This is what is meant by good-faith bargaining (*N.L.R.B. v. Western Wirebound Box Co.* (9 Cir. 1966) 356 F.2d 88, 92). It is on the basis of this obligation that employers are required to furnish information to unions which is "so necessary to effective negotiations that withholding it without good reason was inconsistent with the duty to 'exert every reasonable effort to make and maintain agreements'" (*Sylvania Electric Products, Inc. v. N.L.R.B.* (1 Cir. 1966) 358 F.2d 591, 593, certiorari denied (1967) 385 U.S. 852).

There are three types of information which an employer must supply to a union as a part of the employer's duty to bargain in good faith:

(1) Information which the employer must supply merely because the union requests it has been limited to data which have a direct bearing on wages, hours and working conditions—the mandatory subjects of bargaining —which are the "heart and core of the employer-employee relationship" (*International Woodworkers of America v. N.L.R.B.* (D.C. Cir. 1959) 263 F.2d 483, 485).

(2) Other data must be furnished to the union when the union has requested that the employer substantiate a claim which has been made during the course of negotiations (*Labor Board v. Truitt Mfg. Co.* (1956) 351 U.S. 149, 151-153; *N.L.R.B. v. Western Wirebound Box Co.* (9 Cir. 1966) 356 F.2d 88, 91-92). For example,

> "If the employers claimed that they were unable to pay, the union had a right to be shown evidence of inability. But when the employers refused to pay, the union knew all it was entitled to know. In such a situation, further financial information from the employers' records would be interesting and perhaps useful to the union, but not required; for such information cannot convert stubborn resolution into an excuse for failure to grant a wage increase or provide the basis for mutual bargaining concessions occasioned by a common understanding of financial plight" (*United Fire Proof Warehouse Co. v. N.L.R.B.* (10 Cir. 1966) 356 F.2d 494, 498).

(3) The employer also has the duty to furnish information which is relevant to the policing of the administration of the agreement through the grievance procedure (*N.L.R.B. v. Acme Industrial Co.* (1967) 385 U.S. 432, 436-437). There must, however, be a probability that the information is relevant to the union's processing of a grievance. Where the information is not relevant to a matter which is subject to the grievance procedure,

> "the data in question cannot be relevant to the Union's present or potential policing of the contract through the processing of grievances, and failure to produce it does not constitute a violation of this aspect of the statutory duty to furnish information" (*Square D Company v. N.L.R.B.* (9 Cir. 1964) 332 F.2d 360, 365).

The employee address lists were not sought for any of the foregoing purposes but only as a means by which the Union could contact employees. Contact with the employees might conceivably be used by the Union to seek information which has a direct bearing on the working relationship between the employer and the employee. A list of home addresses cannot be viewed, for that reason alone, however, *as if it were* that sort of information. In the absence of evidence that it was requested for this purpose, and that it was necessary to enable the union to bargain intelligently, address lists may not be equated with the information which might be gained from the opportunity of contacting employees.[3]

In the case at bar, according to the frank admission of the Union itself, the information was sought only to "counter the company propaganda" (General Counsel's Exhibit 3). And there is no support whatever in the record for the statement by the Board that the lists might be used by the "Union to poll the unit employees as to their preferences and priorities in contract negotiations" (R. Vol. I, p. 35). No request for addresses for such a purpose was made to the Company and the Union did not even suggest at the hearing that it wanted the lists for such a purpose (see R. Vol. II, pp. 39-45). Indeed, as was pointed out by Board member Zagoria in his dissent,

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[3]See *Fafnir Bearing Company v. N.L.R.B.* (2 Cir. 1966) 362 F.2d 716, 720-722, where, although the court in that case granted a union the right to contact employees for the purpose of gaining information, it did so only after a careful examination of the nature and relevance of the information (in that case time studies upon which wages were based) which was necessary for the union to intelligently process grievances and that there was no other way in which the information could be obtained.

> "The Union's request for the list of employees' names and addresses was based solely on its desire to 'counter the company propaganda.' The Union's stated reason thus negates any suggestion that the list was sought for bargaining purposes" (R. Vol. I, p. 39).

The Union never pretended that the addresses were desired for any purpose other than to "counter the company propaganda" (General Counsel's Exhibits 3, 7 and 10; R. Vol. II, pp. 39-45). This was the only reason the Union ever indicated to the Company as the basis for its request (R. Vol. II, p. 229). The Union's last request, on March 8, 1966, "repeating the request made to you on several previous occasions" (General Counsel's Exhibit 10) certainly shed no new light on the basis for the Union's request. Neither collective bargaining nor contract administration was ever mentioned to the Company by the Union in connection with its request. Nor were the requests made in the context of negotiations or of grievance administration.

Furthermore, even when a bargaining situation did arise by virtue of a contract opening on benefits during the term of the contract,[4] the Union said nothing to the Company to indicate that it needed the home addresses for bargaining purposes (R. Vol. II, p. 44). The Union's silence on this matter is particularly significant in light of the fact that the Union requested a good deal of other information from the Company in connection with these

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[4]These negotiations were initiated by a Company proposal on May 12, 1965, to amend certain benefit plans (R. Vol. II, pp. 43-44), and there is no evidence that the May negotiations were even contemplated at the time of the Union's requests in April (General Counsel's Exhibits 3 and 7).

negotiations (R. Vol. II, p. 214). The Union made no further request for information in connection with those negotiations (R. Vol. II, p. 219).

The majority of the panel of the Board to which the case was assigned relies on the unsupported allegation made, not by the Union, but by the General Counsel in the complaint, that the list was "relevant to bargaining." But as previously shown (supra, p. 12) home addresses are not the type of information which the employer as part of its duty to bargain in good faith is required to supply merely because the union requests it and there is no support for the allegation in the complaint that the list was "relevant to collective bargaining" (R. Vol. I, p. 33). Moreover, to uphold the decision below on the ground that this allegation in the complaint constitutes a sufficient request for information would mean that an employer would be guilty of bad faith bargaining if he failed to provide the union with any information as long as that request was subsequently stamped, by the Board's General Counsel in the complaint, as "relevant to collective bargaining."

II. THE DECISION OF THE BOARD INTERFERES WITH THE RELATIVE BARGAINING POWER OF THE EMPLOYER AND THE UNION IN DIRECT CONTRAVENTION OF NATIONAL LABOR POLICY.

The decision of the National Labor Relations Board in the case at bar violates the fundamental principle of national labor policy which denies to the Board authority to interfere with the relative bargaining power of the employer and the union (*American Ship Bldg. v. Labor Board* (1965) 381 U.S. 300, 317-318; *Labor Board v. In-*

surance Agents (1960) 361 U.S. 477, 490). National labor policy, as expressed in section 8(d) of the Labor Management Relations Act, 61 Stat. 136, 142, 29 U.S.C. 158(d), prohibits the Board's intrusion into the substantive aspects of bargaining process; the Act does not authorize

> "the National Labor Relations Board to act at large in equalizing disparities of bargaining power between employer and union" (*Labor Board v. Insurance Agents* (1960) 361 U.S. 477, 490).

Moreover, the broad prohibitions of section 8(a)(2) of the Labor Management Relations Act, 61 Stat. 136, 141, 29 U.S.C. 158(a)(2), make it unlawful for an employer to "contribute financial or other support" to any labor organization. The sole exception provided by the statute is permitting employees to confer with the employer during working hours without loss of pay (ibid.). An employer must refrain from assisting a union with material aid designed to make it easier for that union to strengthen its support among its employees.

The Board's decision to require the Company to furnish the home addresses directly contravenes the foregoing principles. The Board's purpose of requiring the Company to assist the Union to become a stronger representative is made explicit by the Board's statement that

> "As bargaining agent, the Union had the statutory duty not only to represent all employees in the unit, but to seek to do so *effectively*. The Union's effectiveness as an employee representative was necessarily dependent on its bargaining strength, and this in turn, was dependent on continued employee adherence and support" (R. Vol. I, pp. 35-36; emphasis added).

As the Board pointed out, the Union could use the employees' home addresses to counter any of the Company's arguments

> "to attempt to show, for example, why the employees needed the Union, how the Union had served them in the past and how it might in the future, why its contract administration actions and its bargaining proposals deserved their backing, and why it was in the employees' interest to provide membership and other support to their bargaining agent" (R. Vol. I, p. 36).

There is no question that the "Union's effectiveness as an employee representative was necessarily dependent upon its bargaining strength." But the Act does not authorize the Board to require the employer to assist in making the union stronger. The Act requires the employer, as part of its duty to bargain in good faith, to "do what is reasonably possible to reach agreement," which includes furnishing to the union, upon its request, information which is pertinent and necessary to the union's negotiations (*N.L.R.B. v. Western Wirebound Box Co.* (9 Cir. 1966) 356 F.2d 88, 92; see supra, pp. 12-13). Good faith bargaining does not, however, require that the employer hand the union a club with which to beat the company into submission. By obligating the company to strengthen the union the Board necessarily affects the very outcome of bargaining.

> "[T]his amounts to the Board's entrance into the substantive aspects of the bargaining process to an extent Congress has not countenanced" (*Labor Board v. Insurance Agents* (1960) 361 U.S. 477, 498).

CONCLUSION

For the foregoing reasons, we respectfully submit that this Court should set aside the Board's order.

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CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

NOBLE K. GREGORY,
Attorney for Petitioner.

(Appendices A and B Follow)

Appendices A and B

Appendix A

RELEVANT PROVISIONS OF THE LABOR MANAGEMENT RELATIONS ACT, AS AMENDED

SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SECTION 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SECTION 8. (d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the

State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

Section 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such

purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

Section 10. (f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to

the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

SECTION 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

Appendix B

LIST OF EXHIBITS

General Counsel's Exhibits	Identified	Offered	Received
1(a) through 1(h)	4	4	4
2	14	15	15
3	16	15	16
4	16	16	17
5	17	17	18
6	18	18	19
7	19	19	19
8	19	19	20
9	20	20	21
10	21	21	22
11	22	22	22
12	23	23	24
13	31	31	31
14	32	32	32
15	42	42	42
16	64	64	64
17	64	64	64
18(a) and 18(b)	159	162	163
19	170	174	174

Respondent's Exhibits	Identified	Offered	Received
1	36	36	36
2	74	(Withdrawn	212)
3	78	81	82
4	143	146	146
5	217	219	(Rejected 219)
6	233	233	236